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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,854	10/17/2003	Ralph M. Pivonka	2-1271-013	9571
803	7590	09/05/2007		
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			EXAMINER MCKANE, ELIZABETH L	
			ART UNIT	PAPER NUMBER
			1744	
			MAIL DATE	DELIVERY MODE
			09/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/687,854

Applicant(s)

PIVONKA, RALPH M.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 20, 21 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-7, 11, 13, 15, 18, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Salooja (GB 1,567,505).

Salooja teaches a method and apparatus for burning an agricultural surface using mobile, enclosed flamer. The flamer includes skids **15**, a hood **11**, and a plurality of burners **19**. The method includes transporting the flamer to a location where the flames are contained within the hood. See page 2, lines 76-79. The hood is open at both the front and back ends so that it is not sealed. See Figures 1 and 3. The hood is composed of an external frame **12,13** and a skin **11,14**. The skin is insulated on a side opposite the burner with insulation **57**. The flamer is pulled by a tractor and attached thereto by three-point hitch **60,61**. See page 4, lines 5-19. As exemplified in Figure 1, the flame direction is substantially horizontal (i.e. the burner is at an angle approximately 25° from horizontal). The fuel tank of Salooja is mounted on the tractor, not the hood. Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. In re King, 801 F.2d 1324, 231 USPQ 136

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(Fed. Cir. 1986). In this case, the Examiner submits that the apparatus of Salooja, when used to burn the soil surface, would necessarily perform the method of soil sterilization.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salooja in view of either Doyle (US 4,250,869) or Jones (US 5,030,086).

Salooja is silent with respect to a means to adjust the burner angle, relative to the hood. Doyle teaches a flame cultivator, much like that of Salooja, wherein the angle of the burner **35** relative to hood **21** may be adjusted in order to allow to burner to approach the ground at either side of the hood or to clear obstacles. See col.2, lines 21-41. Jones discloses a flame cultivator wherein burner device **10** may be adjusted through an array of positions and angles in order to “assure effective burning and destruction of weeds, insects, micro-organisms and the like.” See col.3, lines 48-58. As both Doyle and Jones provide motivation to enable the burner angle of Salooja to be adjusted relative to the hood, it would have been obvious to modify the apparatus of Salooja in order to enable adjustment of the burner angle.

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5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salooja as applied to claim 5 above, and further in view of Stephenson et al. (US 4,805,927).

Salooja is silent with respect to a quick coupler hitch. Stephenson et al. teaches an implement hitch having a quick coupler **68** for connection with a quick coupler **18** of a tractor. It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the quick coupler of Stephenson et al. to connect the flame cultivator of Salooja to a tractor as Stephenson et al. evidences the use of such in connecting agricultural implements to tractors.

6. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salooj as applied to claim 5 above, and further in view of Miles (US 4,088,122).

Salooja is silent with respect to wheels for bearing a weight of the flamer. Miles discloses a flamer supported by wheels **20,22,24,26**. It would have been obvious to one of ordinary skill in the art to add the wheels of Miles to the cultivator of Salooja, in order to ease transportation of the cultivator. Furthermore, when adding the wheels of Miles to Salooja, one would have found it obvious to provide a means to lift the skids off the ground in order to prevent resistance to movement on the wheels.

7. Claims 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salooja as applied to claim 5 above, and further in view of Koboura (JP 6-78658).

With respect to claim 10, the fuel tank of Salooja is mounted on the tractor, not on the hood. However, Koboura evidences a fuel tank **2** mounted on the top of hood **12**. As both locations are available to the practitioner and both offer advantages of their own, the choice of one over the other is deemed obvious as involving no invention or unexpected results.

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As to claim 16, Salooja discloses a heat shield **38** between the fuel pump housing **25** and the hood. Furthermore, Koboura discloses an insulated top covering **19** located between the hood and fuel tank. One in the art would have found it obvious to place insulation between the hood and the fuel tank in order to protect the fuel tank from heat radiated by the burners.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Opfel (US 2003/0192485) in view of Jones.

Opfel teaches a method of sterilizing poultry litter wherein a flamer is employed to heat accumulated poultry litter such that it is sterilized. See paragraphs [0032], [0092], and [0106]. The flame may be under a hood that extends over the litter. The method may be performed *in situ*- that is, the flamer and hood are *transported* to a location, for example a stall, etc. where the litter is located. Opfel does not disclose moving the flamer while heating the animal litter. Jones discloses a method of sterilizing soil using a flamer. See col.3, lines 54-58. It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the burner of Jones in the method of Opfel, as the burner of Jones has been demonstrated to be effective in the sterilization of particulate matter.

Allowable Subject Matter

9. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter:
The prior art of record fails to teach or suggest the apparatus of claim 18 in combination with

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rake teeth disposed forward of the burners and under the hood and a barrier disposed between the rake teeth and the burners under the hood.

Response to Arguments

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

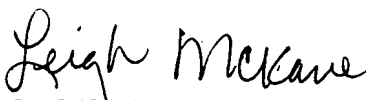
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Leigh McKane
Primary Examiner
Art Unit 1744

elm
13 August 2007